REMARKS / ARGUMENTS

A. General

The application still contains claims 1-44.

In the Office Action, the Examiner has requested the Applicant's co-operation in order to correct any possible minor errors in the specification, given the length of the specification. The Applicant respectfully submits that, at this time, the Applicant is not aware of any minor errors in the specification, other than those addressed in the previous Response filed on April 29, 2005.

B. Rejections under 35 U.S.C §103

On page 5 of the Office Action, the Examiner has rejected claims 1-8 and 11-44 under 35 U.S.C. 103(a) as being unpatentable over *Chang et al.* U.S. Patent No. 6,731,631 (hereinafter referred to as Chang) in view of *Le Bihan* U.S. Patent No. 5,189,672 (hereinafter referred to as Le Bihan). The Applicant respectfully traverses this rejection and submits that the subject matter of claims 1-8 and 11-44 distinguishes clearly and patentably over the cited prior art, as discussed below.

The Examiner's attention is directed to the following emphasized feature of independent claim 1:

> "a control entity to control release of a data packet toward a selected destination cell of said array at least in part **on a basis of a degree of occupancy of the memory in said destination cell**."

The Examiner acknowledges that Chang does not expressly disclose the above-identified feature, as argued by the Applicant in the Response filed on April 29, 2005. However, the Examiner now contends that Le Bihan discloses this feature and that it would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify Chang et al. to include this feature "as taught by Le Bihan in order to regulate the throughput as closely as possible". To support his contention, the Examiner refers to col. 2, lines 34-38, col. 3, lines 59-67 and col. 1, lines 42-43 of Le Bihan.

The Applicant respectfully disagrees with this finding by the Examiner and submits that Le Bihan does not disclose, teach or suggest the above-emphasized feature of claim 1. More specifically, none of the passages from Le Bihan cited by the Examiner teach "releas[ing] data packets toward a selected destination cell [...] on a basis of a degree of occupancy of the memory in [the] destination cell."

Le Bihan is directed to a device for regulating the throughput of virtual circuits carried by an asynchronous time-division multiplex transmission channel. The Applicant would like to draw the Examiner's attention to certain specific passages from Le Bihan, which describe the use of "a degree of occupancy" of a buffer memory and that explain the buffer memory itself, as follows:

> "[...] each cell being stored in the virtual circuit buffer memory associated with the virtual circuit to which the cell belongs, and the outgoing cells of an output asynchronous time-division multiplexing channel are read from the same virtual circuit buffer memories."
> (see col. 2, lines 38-42)

> "[...] throughput dependent data is a measure of the occupancy of the buffer memory of the virtual circuit of the cell in question."
> (see col. 3, lines 55-57)

> "According to another characteristic of the invention, for a degree of filling at least of the buffer memory of a virtual circuit there is provided a count indicator which is incremented when each cell belonging to this virtual circuit is transmitted if said degree of occupancy is exceeded [...]"
> (see col. 3, lines 58-62)

> "[...] the buffer occupancy table [...] indicates the number of cells waiting in the virtual circuit buffer memory. The higher this number, the higher the speed of transmission of the cells of the virtual circuit, that is to say the shorter the time interval between them."
> (see col. 8, lines 20-25)

Firstly, it should be noted that, in Le Bihan, a "cell" is a digital data structure including a header and a message body, where a continuous stream of message cells is carried by a transmission channel (see col. 1, lines 13-27). In contrast, in the present invention, a "cell" is an entity that performs processing on a data packet (e.g. switching of the data packet), where a switch fabric for establishing signal paths between senders and receivers is formed of a plurality of such cells (see page 10, lines 11-18).

Secondly, notwithstanding this distinction between Le Bihan and the present invention, it is clear from the above-cited passages that Le Bihan teaches regulating throughput on the basis of the occupancy of the buffer memory from which the outgoing cells (comparable to "data packets" of the present invention) **are being released**. This is in complete contrast to controlling the release of data packets to a destination cell on the basis of a degree of occupancy of the memory **in the destination cell**, as claimed in independent claim 1 and of which there is neither mention nor suggestion in Le Bihan.

In short, it is clear that the cited prior art references, whether taken alone or in combination, neither explicitly disclose nor implicitly suggest all of the limitations of independent claim 1. It follows that at least one of the criteria required for establishing a *prima facie* case of obviousness in accordance with MPEP 706.02(j)[1] has not been satisfied. The Examiner is therefore respectfully requested to withdraw the rejection of claim 1, which is believed to be in condition for allowance.

Claims 2-8 and 11-44 are all either directly or indirectly dependent on claim 1 and therefore include all the limitations of claim 1, including the feature already shown to be absent from both Chang and Le Bihan. Thus, for the same reasons as those

[1] For the Examiner to establish a *prima facie* case of obviousness, three criteria must be considered: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all of the claim limitations. MPEP §§ 706.02(j), 2142 (8th ed.).

set forth above in support of claim 1, the Examiner is requested to withdraw the rejection of claims 2-8 and 11-44.

Finally, on page 13 of the Office Action, the Examiner has rejected claims 9 and 10 under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Le Bihan and further in view of *McCrosky et al.* U.S. Patent No. 6,741,552 (hereinafter McCrosky). The Applicant respectfully traverses this rejection and submits that claims 9 and 10 are also in allowable form, as set forth below.

Firstly, claims 9 and 10 are both dependent on claim 1 and therefore include all of the limitations of claim 1, including the feature already shown to be absent from both Chang and Le Bihan. Specifically, it has been shown that Chang and Le Bihan, whether taken alone or in combination, fail to teach or suggest:

> "a control entity to control release of a data packet toward a selected destination cell of said array at least in part **on a basis of a degree of occupancy of the memory in said destination cell.**"

Moreover, it is respectfully submitted that the above feature is also absent from McCrosky, which is directed to a cell switching architecture based on a network of switching elements connected in the manner of a hypercube to form a switch fabric. Specifically, McCrosky lacks any description of memory occupancy or, more specifically, of controlling the release of data packets on a basis of a degree of occupancy of the memory in the destination cell.

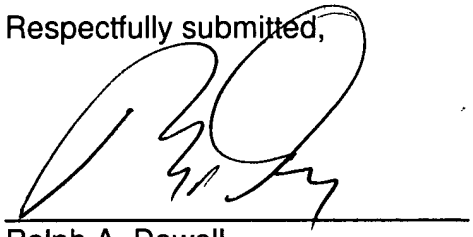
Accordingly, the Applicant respectfully submits that claims 9 and 10 are neither anticipated nor rendered obvious by the cited prior art and, as such, are in full condition for allowance. The Examiner is requested to withdraw his rejection of claims 9 and 10.

CONCLUSION

In light of the foregoing, the Applicant is of the view that claims 1-44 are in allowable form. Favourable reconsideration is requested. Early allowance of the application is earnestly solicited.

If the application is not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP 707.07(j) or in making constructive suggestions pursuant to MPEP 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



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